

Service Date: December 14, 1992

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER of the Application of )	TRANSPORTATION DIVISION
Harvie's Hotshot Service & Trucking )	
Inc., Cut Bank, Montana, for a )	DOCKET NO. T-9881
Class B Montana Intrastate )	
Certificate of Public Convenience )	ORDER NO. 6161
and Necessity. )	

FINAL ORDER

APPEARANCES

FOR THE APPLICANT:

Richard A. Shors, 5 West Main, Cut Bank, Montana 59427

FOR THE PROTESTANTS:

John P. Moore, 13 East Main, Cut Bank, Montana 59427

FOR THE COMMISSION:

Timothy N. Sweeney, Staff Attorney, 1701 Prospect Avenue, Helena, Montana 59620

Wayne Budt, Transportation Division, 1701 Prospect Avenue, Helena, Montana 59620

BEFORE:

Danny Oberg, Commissioner and Hearing Examiner

### BACKGROUND

On May 15, 1992 the Commission received an application from Harvie's Hotshot Service & Trucking, Inc. (Applicant), for a Certificate of Public Convenience and Necessity, Class B, authorizing the transportation of material, equipment and supplies used or useful in the discovery or production of petroleum or natural gas, including casing, pipe, pumping units, rigs, tankage, cats, and general supplies between all points and places in Glacier County, but with the limitation that the transportation of petroleum and petroleum products in bulk would be prohibited.

The Commission received written protests from the following carriers: Dick Irvin, Inc., PSC No. 1649; Rex Harris, Inc., PSC No. 2120; and Merton T. and Gretchen L. Hesla, dba Kevin Trucking Service, PSC No. 2376.

Following issuance of proper notice, a hearing was held on August 27, 1992 in Room #3, Courthouse Annex, 1211 East Main Street, Cut Bank, Montana. At the conclusion of the hearing the parties stipulated to a final order.

### SUMMARY OF TESTIMONY

#### For the Applicant

Mr. Dwayne Yttredahl, appearing on behalf of CENEX Crude Oil Pipelines, testified that Black Hills Trucking was providing service until approximately one year ago when it left town and that there is currently no carrier based in Glacier County providing the service proposed by Applicant. He also testified that the ability to respond to emergencies makes a local carrier important.

Mr. Jim Erikson of Berenergy Corporation testified that the delay inherent in using a carrier from outside Glacier County is a problem not only in terms of being able to timely respond to emergencies but also because of the cost associated with bringing in a carrier from Shelby or Havre. He stated other carriers have provided the proposed service since Black Hills Trucking left, but only at a

greater cost and with greater delay.

Mr. Bruce Milbrandt of Axelson, Inc., testified that it would be an advantage to have a carrier based in Cut Bank.

Mr. Jerry Croft, President of Croft Petroleum Company, testified that there is a definite need for Applicant's service. He stated that though he had used the services of Dick Irvin, Inc. and Kevin Trucking to his satisfaction, the costs associated with waiting for their services made time not quality the issue.

Mr. Byron Nanini, testifying on behalf of Union Oil Company, also indicated that cost was important factor and that convenience would be served by having a carrier based in Cut Bank. He also stated that Union Oil's policy is to use carriers with a Union Oil service contract, and that Applicant is the only such carrier in the area.

Mr. John Wiley, Pipeline Supervisor for Ashland Oil, testified that time and distance are important factors in choosing a carrier and that delay can cost \$60-\$70 an hour. He also testified that the service provided by Kevin Trucking was inadequate.

Mr. Bill Croft, Chairman of the Board of Croft Petroleum Company, testified there was a need for Applicant's service. He also stated that while he had no complaints regarding the quality of service provided by other carriers, Applicant was the only carrier to contact him when Black Hills Trucking went out of business.

Mr. Calvin DeZort, Field Foreman for Mont-Mill Operating Co., testified that need existed on the basis of the time and cost involved in waiting for a carrier from Shelby to provide service.

Mr. Darrell Lowrance, owner/operator of Eline Oilfield Services, testified that a Cut Bank-based carrier was needed because of the time and money involved in obtaining service elsewhere.

Mr. Steve Greenwood of Greenwood Trucking testified in support of the application

generally.

Mr. Jim Kennedy, Revenue Director for the Blackfeet Tribe, testified that Applicant is the only carrier licensed to operate on the reservation. He noted that the reservation covers approximately 90 percent of Glacier County land and that approximately 95 percent of the operating oil wells are located on the reservation.

Mr. Floyd Gervais, Representative for House District 9, appeared in support of the application.

Mr. Delwyn Gage, Senator for Senate District 5, also appeared in support of the application.

Mr. Andrew Harvie, testified in support of his application. On cross-examination, he admitted to having received several tickets for motor carrier violations.

For the Protestant

Mr. Joseph Montalban, President and CEO for MSR Exploration Limited, testified against the application on the basis that economics should determine whether another carrier is permitted to operate. He did not believe that economics justified another carrier.

Mr. Patrick M. Montalban, President and CEO for all MSR Exploration Limited subsidiaries, testified against the application on the basis that time is not a controlling factor in establishing need for services such as those offered by Applicant. He believed that while vacuum truck services might be required in an oilfield emergency, Applicant's services would not be required right away.

Al Bonnarnes, Montana Public Service Commission Field Officer, was subpoenaed by the protestants. He testified as to various motor carrier violations by Applicant, including operating without proper authority and failure to display proper identification.

Mark Cole, head of the Administrative Department for Dick Irvin, Inc., testified that Dick Irvin, Inc. has been able to respond to every emergency call it has received. He further testified that from 1983 to 1991 revenues for the type of service proposed by Applicant have fallen from \$593,248.61 to \$178,400.65; and that Applicant's proposed service could be expected to reduce the revenues even further.

Robert Harris, President of Rex Harris, Inc., testified that another carrier was not needed since business in the oilfields was already tight.

### DISCUSSION

In considering applications for operating authority, the Commission is governed by the provisions of 69-12-323, MCA. Paragraph (2)(a) of that section provides as follows:

(2)(a) If after hearing upon application for a certificate, the commission finds from the evidence that public convenience and necessity require the authorization of the service proposed or any part thereof, as the commission shall determine, a certificate therefore shall be issued. In determining whether a certificate should be issued, the commission shall give reasonable consideration to the transportation service being furnished or that will be furnished by any railroad or other existing transportation agency and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout 12 months of the year and the effect which the proposed transportation service may have up on other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby.

Applying this language to the facts presented by any application for additional transportation authority, the Commission has traditionally undertaken the following analysis: First, it asks whether the applicant has demonstrated that there is a public need for the proposed service. If the applicant has not demonstrated public need then the application is denied and there is no further inquiry. Second, if the applicant has demonstrated a public need for the proposed service, then the Commission

asks whether existing carriers can and will meet that need. If demonstrated public need can be met as well by existing carriers as by an applicant, then, as a general rule, an application for authority will be denied. Third, once it is clear that there is public need that cannot be met as well by existing carriers, the Commission asks whether a grant of additional authority will harm the operations of existing carriers contrary to the public interest. If the answer is yes, then the application for new authority will be denied. If the answer is no, then the application will be granted, assuming the Commission determines the applicant fit, willing and able to provide the proposed service.

The traditional analysis described above has perhaps been stated most concisely in the case of Pan American Bus Lines Operation, 1 M.C.C. 190, 203 (1936):

The question, in substance, is whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines of carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

Accordingly, the first question to be addressed is whether Applicant has demonstrated a public need for the proposed service. In order to show public need an applicant must solicit the support of shippers or other qualified users of the transportation service in question. Applicant here presented numerous shipper witnesses in support of the application. The testimony of these witnesses focused on the need for a local carrier who could timely respond to their needs. Because the closest existing carrier is located in Shelby, approximately 25 miles from Cut Bank, most of the witnesses felt that the ability to use a local carrier such as Applicant would result in lower transportation, labor and equipment rental costs, as well as faster response time to oilfield emergencies.

Patrick Montalban and Mark Cole, witnesses for protestant Dick Irvin, Inc., both disputed the actual need for Applicant's services in an emergency. However, the clear weight of the testimony provided by the shipping witnesses supports the conclusion that there is a need for Applicant's

emergency services.

Protestants raised on cross-examination the issue of preferences and whether these witnesses were actually expressing a preference for a particular carrier rather than a need. Indeed, it is generally accepted that a mere preference for a carrier is insufficient for purposes of establishing need. However, it appears clear that the witnesses were not expressing a mere preference for the Applicant. The testimony indicated that need was based on the following factors: 1) the delay inherent in using a Shelby- or Havre-based carrier resulted in greater labor and equipment rental costs; 2) transportation costs were greater because of the carrier's initial travel from Shelby or Havre; and 3) a shipper's ability to respond to emergencies would be compromised. Preference implies a choice between carriers offering the same or similar services for essentially the same price. These factors indicate that Applicant is able to provide a needed cost-effective and timely service that the other carriers cannot; and the need for such service may be particularly acute considering the slim operating margins that shippers are realizing from stripper well production. Based on the foregoing, the Commission finds that need does exist for Applicant's service.

It should be noted that Commission practice is to require that shipper need be based on rate-neutral factors. In other words, the fact that an applicant is proposing rates lower than those offered by existing carriers generally will not suffice as a justification for a proposed service. That practice does not change here. The shipper's need for a cost-efficient service in this case is not based on rates. Rather, it is a function of the existing carriers' decision not to base any of their equipment in Cut Bank. A certificated carrier who decides not to provide service that will sufficiently satisfy the needs of its customers runs the risk of a competing service that will offer the type of service demanded by shippers. Cost effectiveness and timely response are merely by-products of adequate service and are proper factors to be considered in the evaluation of need.

The second question to be answered then is whether the needs of these shippers can be served as well by existing carriers. This question has been essentially answered by the preceding discussion regarding preference. There are other carriers with authority to provide the type of service proposed by Applicant: Dick Irvin, Inc.; Rex Harris, Inc.; and Kevin Trucking Service. However, since none of these carriers is based in Cut Bank, they are unable to provide the timely and cost-efficient service required by Cut Bank shippers. Therefore, the Commission finds that the needs of the shippers cannot be served as well by existing carriers.

The next question for the Commission to address is whether a grant of additional authority will harm the operations of the existing carriers contrary to the public interest. While the protestants' testimony clearly indicated that the market for their services is tight, the Commission cannot find that the grant of additional authority will harm their operations to the extent of being contrary to public interest. The testimony of Robert Harris of Rex Harris, Inc., was that his company only occasionally provides service of the type proposed by Applicant. Therefore, it appears unlikely that Rex Harris, Inc. will be harmed in any significant way. And, the testimony of Mark Cole was that Dick Irvin, Inc.'s 1991 revenue from this service was \$178,400.65, and that Applicant's service could be expected to reduce their revenue by approximately \$33,000. However, the testimony also showed that this service is but a small portion of Dick Irvin, Inc.'s, overall operations. The Commission recognizes and appreciates the inherent fiscal impact of granting an additional authority, but the impact in this case appears minimal. Therefore, the Commission finds that the grant of additional authority will not harm the operations of the existing carriers contrary to the public interest.

Finally, there was testimony regarding Applicant's previous violations of motor carrier regulations which effectively raised the issue of fitness. A carrier's disregard for the laws and regulations applicable to motor carrier transportation is a serious matter and can result in a finding that the carrier is unfit to provide service. Al Bonnarens, the Commission's own field officer, identified seven motor

carrier violations committed by Andrew Harvie. Two of these violations resulted from the failure to properly placard his vehicle. One violation for improper operating authority was dismissed and there was no disposition for a second. There were convictions for the remaining three violations, also for improper operating authority. While the Commission is concerned by these violations, and though Mr. Bonnarens termed Mr. Harvie a habitual offender, the evidence of Mr. Harvie's culpability was vague and failed to support a finding that he has a disregard for the laws such that he is unfit as a motor carrier. Nonetheless, Applicant is cautioned that the Commission expects all future operations to be in full compliance with the law.

Based on the foregoing, the application of Harvie's Hotshot Service and Trucking, Inc. is hereby granted.

#### CONCLUSIONS OF LAW

1. The Montana Public Service Commission has jurisdiction over the parties and subject matter addressed in this proceeding. Section 69-12-201, MCA.
2. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter as required by Section 69-12-321 and 69-12-322, MCA.
3. The Commission has the authority to grant a certificate of operating authority if required by public convenience and necessity. Section 69-12-323.

ORDER

NOW THEREFORE IT IS ORDERED that the application of Harvie's Hotshot Service & Trucking, Inc., for a Class B, Montana Intrastate Certificate of Public Convenience and Necessity is hereby granted, authorizing the transportation of material, equipment and supplies used or useful in the discovery or production of petroleum or natural gas, including casing, pipe, pumping units, rigs, tankage, cats, and general supplies between all points and places in Glacier County, but with the limitation that the transportation of petroleum and petroleum products in bulk would be prohibited.

IT IS FURTHER ORDERED that all objections and motions made during the hearing in this Docket that were not ruled on are denied.

Done and Dated this 14th day of December, 1992 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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DANNY OBERG, Chairman

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WALLACE W. "WALLY" MERCER, Vice Chairman

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BOB ANDERSON, Commissioner

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JOHN DRISCOLL, Commissioner

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TED C. MACY, Commissioner

ATTEST:

Kathlene M. Anderson  
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.